



Comptroller General
of the United States

Washington, D.C. 20548

Maeder / 52936

4701411

Decision

Matter of: Stamatis Lykos
File: B-257843
Date: November 14, 1994

Stamatis Lykos for the protester.
James N. McCutcheon, Esq., and Paul M. Fisher, Esq.,
Department of the Navy, for the agency.
Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Where bid does not include required Certificate of
Procurement Integrity, bidder is not committed to
certificate's terms and bid must be rejected as
nonresponsive.

DECISION

Stamatis Lykos protests the rejection of his bid as
nonresponsive for failure to include a Certificate of
Procurement Integrity as required by invitation for bids
(IFB) No. N33191-94-B-7369, issued by the Department of the
Navy, Naval Facilities Engineering Command, for the repair
of roofs on various buildings located at the Naval Support
Activity, Souda Bay, Crete. Lykos argues that the required
certificate was included in his bid envelope and,
alternatively, even if the certificate was not included with
the bid, Lykos should be permitted to comply with the
requirement subsequent to bid opening.

We deny the protest.

The IFB included the provision at Federal Acquisition
Regulation (FAR) § 52.203-8, "Requirement for Certificate of
Procurement Integrity," which required that the certificate
be completed by the officer or employee responsible for
preparation of the bid. The IFB also advised that
"[f]ailure to submit the signed certificate with the bid
shall render the bid nonresponsive."

Seven bids were received; Lykos's bid was second low.¹ At bid opening, an agency representative opened each bid and read the name and address of the bidder, the bid amount, the amount of the bid guarantee, the name of the guarantor, and whether or not the amendments were acknowledged. The contracting officer reports that all bid documents were returned to the bid envelopes and retained by the contracting officer. The contracting officer also states that while the Lykos bid envelope contained two copies of the bid, it did not include the required certificate.

Lykos's bid was rejected as nonresponsive for failure to submit a certificate of procurement integrity. By letter dated July 6, Lykos was notified that his bid was rejected and that award was made to J/V Alki Ltd.--Joint Ltd., the third-low bidder.

Lykos protests that his bid should not be rejected for failing to submit a certificate of procurement integrity, arguing that, contrary to the agency's assertion, the signed certificate had been prepared and included in the bid envelope and, presumably, the agency lost or misplaced it. To support his position, the protester submitted to our Office a signed statement from an employee who states that she included the required certificate in the bid envelope and sealed the envelope. The protester also suggests that the certificate may have been intentionally removed from his bid package, stating that there may be individuals "within the [a]gency's local contracting office who had an illegal interest in removing the required certificate from the bid envelope." In the alternative, Lykos argues that even if there was no certificate submitted with his bid, Lykos should be allowed to subsequently submit the certificate.

The Certificate of Procurement Integrity requirement, set forth at FAR § 52.203-8, implements section 27 of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (1988 and Supp. V 1993), which bars agencies from awarding contracts unless a bidder or offeror certifies in writing that neither it nor its employees have any information concerning violations or possible violations of the procurement integrity provisions of the OFPP Act set forth elsewhere in the act. Shifa Servs., Inc., 70 Comp. Gen. 502 (1991), 91-1 CPD ¶ 483. As a result of the substantial legal obligations imposed by the certification,² when a

¹The apparent low bidder withdrew its bid.

²The certification requirements are significantly different from those to which bidders otherwise are bound because they obligate a named individual--the officer or employee of the
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signed Certificate of Procurement Integrity is omitted from a bid, the bidder is not clearly bound to comply with a material requirement of the IFB; accordingly, a bidder's failure to submit a signed certificate with its bid is a material deficiency requiring that the bid be rejected as nonresponsive. See FAR § 14.404-2(m); Bootz Distrib., B-251155, Feb. 10, 1993, 93-1 CPD ¶ 123; Atlas Roofing Co., Inc., B-237692, Feb. 23, 1990, 90-1 CPD ¶ 216.

Even if we assume, as Lykos suggests, that the certificate was included in its bid package and that the agency lost or misplaced the certificate, Lykos still cannot prevail. Where a bidder has complied with the bid submission requirements of a particular solicitation, but some portion thereof has been lost after receipt at the procuring activity, the general rule is that the bidder may not then submit what is purported to be a copy of that submission, as the award of a contract on the basis of self-serving statements as to the contents of the bid package initially submitted would not be consistent with the maintenance of the competitive system. See Vereinigte Gebäudereinigungsgesellschaft, B-252546, June 11, 1993, 93-1 CPD ¶ 454.

Additionally, because the certifier's additional obligations are material, bidders may not be permitted to furnish completed certificates after bid opening since such action would prejudice the integrity of the competitive bidding system by giving an otherwise successful bidder an opportunity to walk away from a low bid.² See Three D. Indus. Maintenance Corp.--Recon., B-245422.2, Feb. 6, 1992, 92-1 CPD ¶ 152.

Lykos's suggestion of bad faith on the part of agency individuals "who had an illegal interest in removing the required certificate" from the bid envelope provides no

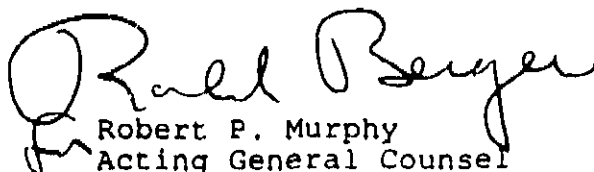
²(...continued)

contractor responsible for the bid or offer--to become familiar with the prohibitions of the OFPP Act, and impose on the bidder, and its representative, a requirement to make full disclosure of any possible violations of the OFPP Act, and to certify as to the veracity of that disclosure.

³Lykos's argument that his bid guarantee would prevent the firm from deciding after bid opening to "walk away from a low bid" is not persuasive. A bid guarantee does not correct material defects in a bid; rather, it guarantees that upon the government's acceptance of a responsive bid, the bidder will not withdraw the bid and will execute a contract and furnish the required bonds. FAR § 28.001.

basis to sustain the protest. To establish bad faith, our Office requires the presentation of convincing proof that government officials had a specific and malicious intent to injure the protester. Sanstrans, Inc., B-245701, Jan. 27, 1992, 92-1 CPD ¶ 112. Lykos's allegation of improper behavior on the part of agency officials is based solely on supposition with no supporting evidence and does not meet this standard.

The protest is denied.


Robert P. Murphy
Acting General Counsel